

STATE OF MICHIGAN
COURT OF APPEALS

BARBARA WALTER, a/k/a BARBARA S.
GREENE,

UNPUBLISHED
May 17, 2012

Plaintiff-Appellee,

v

FRED OJALA,

No. 303725
Baraga Circuit Court
LC No. 2008-005842-CH

Defendant-Appellant.

Before: MARKEY, P.J., and BECKERING and M. J. KELLY, JJ.

MEMORANDUM.

In this property dispute between neighboring landowners, defendant Fred Ojala appeals by right the trial court's judgment in favor of plaintiff Barbara Walter. Because we conclude that there were no errors warranting relief, we affirm.

Ojala argues on appeal that the trial court erred when it relied on a survey done in 2009 to find the disputed boundary's location. Ojala contends that the trial court had to find the location of the boundary by reference to various monuments—namely, a deteriorating fence and a protruding pipe. This Court reviews de novo a trial court's ultimate decision in an action to quiet title, but reviews the factual findings underlying that decision for clear error. *Jonkers v Summit Twp*, 278 Mich App 263, 265; 747 NW2d 901 (2008).

Ojala relies on those authorities that provide that monuments control the course and distance for boundaries. See *Adams v Hoover*, 196 Mich App 646, 652-653; 493 NW2d 280 (1992); see also *Jonkers*, 278 Mich App at 267-268. We agree that a surveyor's duty is to relocate the courses and lines at the same place that the original surveyor used and that a resurvey that is not based on the original survey will yield to a new survey based on known monuments and boundaries. *Adams*, 196 Mich App at 651-652. However, Ojala is mistaken when he concludes that this rule necessarily applies to the deteriorating fence line found north of Pirkola Road. In his 2009 survey, Michael Mileski, a licensed professional surveyor, utilized *existing* Baraga County monuments marking the four corners of the southeast quarter of section 19 in establishing the boundary line between the southwest and northwest quarters of the southeast quarter of section 19. Mileski determined that the northwestern boundary of Ojala's property is one-foot south of the physical centerline of Pirkola Road, and the northeastern boundary of his property is three-feet north of the physical centerline of Pirkola Road. Further,

as the trial court noted, “there is nothing in the record that convinces the Court that the 2009 survey is . . . at odds with any earlier official government survey.” Ojala has provided no evidence that the purported monuments on which he relies were ever relied upon by an initial survey in establishing boundaries.

The trial court did not err when it relied on the 2009 survey rather than on the evidence concerning the deteriorated fence line and pipe. And there were otherwise no errors warranting relief.

Affirmed.

/s/ Jane E. Markey
/s/ Jane M. Beckering
/s/ Michael J. Kelly